

## SENATE BILL No. 412

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-13-2; IC 9-23-3.

**Synopsis:** Unfair practices concerning motor vehicles. Expands what are considered to be unfair practices by motor vehicle manufacturers, dealers, and franchisees.

**Effective:** July 1, 2002.

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January 10, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 412

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-13-2-38.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2002]: **Sec. 38.5. "Costs", for purposes of IC 9-23-3, has the**  
4 **meaning set forth in IC 9-23-3-0.2.**

5 SECTION 2. IC 9-13-2-97 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 97. (a) "Manufacturer"  
7 means, except as provided in ~~subsection~~ **subsections (b) and (c)**, a  
8 person engaged in the business of constructing or assembling vehicles,  
9 of a type required to be registered under IC 9-18, at an established  
10 place of business in Indiana. The term does not include a converter  
11 manufacturer.

12 (b) "Manufacturer", **except as provided in subsection (c)**, for  
13 purposes of IC 9-23, means a person who is engaged in the business of  
14 manufacturing or assembling motor vehicles or major component parts  
15 of motor vehicles, or both, and sells motor vehicles to dealers,  
16 wholesale dealers, distributors, or the general public. The term includes  
17 the following:



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- (1) A factory branch office of the manufacturer.
- (2) An authorized representative of the manufacturer.
- (3) A partnership, a firm, an association, a joint venture, a limited liability company, a corporation, or a trust, resident or nonresident, that is controlled by the manufacturer.

The term does not include a converter manufacturer.

(c) "Manufacturer", for purposes of IC 9-23-3-3, IC 9-23-3-14, IC 9-23-3-15, IC 9-23-3-15.5, IC 9-23-3-15.7, IC 9-23-3-15.9, and IC 9-23-3-25, includes the following:

- (1) A parent of the manufacturer.
- (2) A subsidiary of the manufacturer.
- (3) An affiliate of the manufacturer.
- (4) A person under common ownership or control of the manufacturer.
- (5) An employee of the manufacturer.
- (6) A person holding at least one percent (1%) of the shares of any class of securities or other ownership interest in the manufacturer, if a warranty of service or repair plan is issued by the person instead of, or in addition to, one (1) issued by the manufacturer.

SECTION 3. IC 9-13-2-129.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 129.5. "Prevailing retail price charged by the dealer for the same parts", for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.3.**

SECTION 4. IC 9-13-2-148.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 148.5. "Reasonable compensation", for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.4.**

SECTION 5. IC 9-13-2-181.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 181.5. "Trade name" means the name given by a manufacturer to a line of motor vehicles to distinguish it as produced or sold by the manufacturer and that may be used and protected as a trademark.**

SECTION 6. IC 9-13-2-191.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 191.5. "Uniform time standard manual", for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.5.**

SECTION 7. IC 9-23-3-0.2 IS ADDED TO THE INDIANA CODE



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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2002]: **Sec. 0.2. As used in this chapter, "costs" means the**  
3 **remainder between the uniform parts reimbursement rate set forth**  
4 **in a contract entered into under section 25 of this chapter and the**  
5 **prevailing retail price charged by the dealer received by a**  
6 **franchisee of the same trade name.**

7 SECTION 8. IC 9-23-3-0.3 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2002]: **Sec. 0.3. As used in this chapter, "prevailing retail price**  
10 **charged by the dealer for the same parts" means the amount**  
11 **determined under STEP FOUR of the following formula:**

12 **STEP ONE: Add the price paid by the franchisee for parts, all**  
13 **shipping charges for parts, and other charges for parts.**

14 **STEP TWO: Determine the average percentage markup over**  
15 **the price paid by the franchisee for parts purchased by the**  
16 **franchisee from the manufacturer and sold at retail and express**  
17 **this percentage as a number rounded to the nearest one**  
18 **hundredth (0.01).**

19 **STEP THREE: Add one (1) plus the number determined under**  
20 **STEP TWO.**

21 **STEP FOUR: Multiply the STEP ONE amount by the STEP**  
22 **THREE amount.**

23 SECTION 9. IC 9-23-3-0.4 IS ADDED TO THE INDIANA CODE  
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
25 1, 2002]: **Sec. 0.4. As used in this chapter, "reasonable**  
26 **compensation", for purposes of IC 9-23-3-14, means the prevailing**  
27 **wage rates paid by the dealer in the market area in which the**  
28 **dealer does business.**

29 SECTION 10. IC 9-23-3-0.5 IS ADDED TO THE INDIANA CODE  
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
31 1, 2002]: **Sec. 0.5. As used in this chapter, "uniform time standard**  
32 **manual", for purposes of IC 9-23-3-25(b), means a schedule**  
33 **established by a manufacturer setting forth the time allowances for**  
34 **the diagnosis and performance of warranty work and service.**

35 SECTION 11. IC 9-23-3-3 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 3. (a) It is an unfair**  
37 **practice for a dealer to willfully fail to perform the obligations placed**  
38 **on the dealer in connection with the manufacturer's or distributor's**  
39 **warranty agreement, including obligations relating to labor and**  
40 **parts, applicable to any motor vehicle sold by that dealer.**

41 **(b) It is an unfair practice for a manufacturer to willfully fail to**  
42 **reimburse the dealer for parts provided in satisfaction of a**

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warranty at the prevailing retail price charged by the dealer for the same parts when not provided in satisfaction of a warranty, provided that the dealer's prevailing retail price is not unreasonable when compared with that of other dealers from the same manufacturer for identical merchandise in the geographic area where the dealer is engaged in business.

SECTION 12. IC 9-23-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. It is an unfair practice for a manufacturer or distributor to fail to **reasonably** compensate to a dealer the posted hourly labor rate for ~~the diagnostic~~ work and **repair** services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise or fail to compensate to a dealer the posted hourly labor rate for labor and other expenses incurred by the dealer under the manufacturer's warranty agreements as long as the posted rate is reasonable. ~~Judgment of the reasonableness includes consideration of charges for similar repairs by comparable repair facilities in the local area as well as mechanic's wages and fringe benefits. The compensation paid to the dealer by the manufacturer for warranty service may not be less than the rates charged by the dealer for similar service to retail customers not covered under warranty.~~

SECTION 13. IC 9-23-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. It is an unfair practice for a manufacturer or distributor to:

- (1) fail to pay all claims made by dealers for compensation for delivery and preparation work and warranty work, **including parts**, within thirty (30) days after approval;
- (2) fail to approve or disapprove the claims within thirty (30) days after receipt; ~~or~~
- (3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval **within thirty (30) days after submission or the claim will be considered an approval with payment to follow in not less than sixty (60) days after submission; or**
- (4) fail to permit a dealer to correct and resubmit a **disapproved claim within thirty (30) days after receipt of the disapproval.**

**The manufacturer or distributor may require documentation for claims and to audit the claims within a one (1) year period from the date the claim was paid, or credit issued by the manufacturer or distributor, and to charge back a false or unsubstantiated claim.**

SECTION 14. IC 9-23-3-15.5 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2002]: **Sec. 15.5. It is an unfair practice for a franchisee to fail to allow a manufacturer to:**

(1) audit claims for incentive and reimbursement programs for a period of less than eighteen (18) months after the date of the transaction that is subject to audit by the manufacturer;  
or

(2) charge back any claims considered to be false or unsubstantiated by the manufacturer.

SECTION 15. IC 9-23-3-15.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2002]: **Sec. 15.7. It is an unfair practice for a manufacturer:**

(1) by agreement;

(2) by restrictions upon reimbursement; or

(3) otherwise;

to restrict the nature and extent of services to be rendered or parts to be provided so that the restriction prevents the franchisee from satisfying the warranty by rendering services in a workmanlike manner and by providing parts that are required in accordance with generally accepted standards.

SECTION 16. IC 9-23-3-15.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2002]: **Sec. 15.8. (a) For purposes of this chapter, average percentage markup is determined under STEP TWO or STEP THREE of the following formula:**

**STEP ONE:** Determine the number of customer paid service repair orders made during any ninety (90) days in the one hundred eighty (180) day period preceding the date the average percentage markup is submitted to the manufacturer.

**STEP TWO:** This STEP applies only if the number determined under STEP ONE is at least one hundred (100).

Determine the result under clause (C) of the following formula:

(A) Select one hundred (100) sequential customer paid service repair orders paid during the one hundred eighty (180) day period preceding the date the average percentage markup is submitted to the manufacturer.

(B) Determine the sum of the percentages for each of the one hundred (100) orders selected under clause (A).

(C) Divide the amount determined under clause (B) by one hundred (100).

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**STEP THREE: This STEP applies only if the number determined under STEP ONE is less than one hundred (100). Determine the result under clause (B) of the following formula:**

**(A) Determine the sum of the markup percentages for each of the customer paid service repair orders made during the ninety (90) days described in STEP ONE.**

**(B) Divide the amount determined under clause (A) by the number of customer paid service repair orders determined under STEP ONE.**

**(b) The following are the only items to be considered in determining average percentage markup:**

**(1) Retail sales not involving warranty repairs.**

**(2) Parts required in accordance with generally accepted standards.**

**(3) Parts supplied for routine vehicle maintenance.**

**(c) After determination of the average percentage markup, the franchisee shall submit the average percentage markup to the manufacturer.**

**(d) The average percentage markup shall take effect thirty (30) days following the submission of the figure to the manufacturer, subject to:**

**(1) audit of the submitted repair orders by the manufacturer; and**

**(2) adjustment of the average percentage markup based on the audit.**

**SECTION 17. IC 9-23-3-15.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15.9. (a) Except as provided in subsection (b), if a manufacturer supplies a part for use in a repair rendered under a warranty other than by sale of that part to the franchisee, the franchisee is entitled to compensation equivalent to the franchisee's average percentage markup in the parts as if the part had been sold to the franchisee by the franchisee.**

**(b) The manufacturer shall reimburse the franchisee for entire:**

**(1) engine assemblies; and**

**(2) transmission assemblies;**

**at the rate of thirty percent (30%) of what the franchisee would have paid the manufacturer for the assembly if the assembly had not been supplied by the manufacturer other than by the sale of the assembly to the franchisee.**

**(c) It is an unfair practice for a manufacturer to require a**

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franchisee to establish average percentage markup by a methodology or by requiring information that is unduly burdensome or time consuming to provide, including:

- (1) part by part; or
- (2) transaction by transaction;

calculations.

(d) It is an unfair practice for a franchisee to request a change in the average percentage markup more than two (2) times in a calendar year.

SECTION 18. IC 9-23-3-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. (a) This section does not authorize a manufacturer and its franchisees in Indiana to establish an hourly labor reimbursement rate effective for the entire state.

(b) A manufacturer and a majority of franchisees in Indiana of the same trade name may agree in an express written contract to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include the following:

- (1) The reimbursement for parts used in warranty repairs.
- (2) The use of a uniform time standard manual.

Reimbursement for parts under the contract shall be used instead of the franchisees' prevailing retail price charged by the dealer for the same parts. The allowance for diagnosis within the uniform time standard manual must be reasonable and adequate for the work and service to be performed. The manufacturer shall have a reasonable and fair procedure for a franchisee to request a modification of a standard included in the uniform time standard manual.

(c) The contract must do the following:

- (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediate prior contract.
- (2) Apply to all warranty repair orders written during the period that the agreement is in effect.
- (3) Be available during the period it is in effect to any franchisee of the same trade name at any time and on the same terms as other franchisees.
- (4) Be for a term not to exceed three (3) years.

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(5) Allow any party to the policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.

(6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(d) A manufacturer that enters into a contract with its franchisees under subsection (b) may only seek to recover its costs from a franchisee that receives the prevailing retail price charged by the dealer subject to the following:

(1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.

(2) A manufacturer may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same trade name that have requested reimbursement for warranty repairs at the prevailing retail price charged by the dealer.

(e) A manufacturer that enters into a contract with its franchisees under subsection (b) shall do the following:

(1) Certify to the bureau at the time of the contract under oath signed by the president, vice president, or secretary of the corporation that a majority of the franchisees of the trade name were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Certify to the bureau each year under oath signed by the president, vice president, or secretary of the corporation that the reimbursement costs the corporation recovers under subsection (d) are received from a franchisee at the price provided for under subsection (d).

(4) Maintain a file that contains the information upon which the certification required under subdivision (3) is based for a period of three (3) years after the certification is made.

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